

Mr. David Bernhart
Assistant Regional Administrator
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Southeast Regional Office
Protected Resources Division
263 13th Avenue South
St. Petersburg, Florida 33701-5505

SUBJECT: Informal Endangered Species Act Section 7 Consultation Request
Kampachi Farms, LLC – Velella Epsilon Marine Aquaculture Facility

Dear Mr. Bernhart:

The U.S. Environmental Protection Agency Region 4 (EPA) and the U.S. Army Corps of Engineers Jacksonville District (USACE) are obligated under Section 7(a)(2) of the Endangered Species Act (ESA) to ensure that any action it approves is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat. The purpose of this letter is to request the initiation of informal consultation with the National Marine Fisheries Service (NMFS) under ESA § 7(a)(2), the ESA implementing regulations at 50 CFR § 402.13, and the Memorandum of Agreement Between the EPA, NMFS, and Fish and Wildlife (USFWS) regarding enhanced coordination (ESA MOA).¹

On November 9, 2018, the EPA received a complete application for a National Pollutant Discharge Elimination System (NPDES) permit from Kampachi Farms for the discharge of pollutants from a marine aquaculture facility in federal waters of the Gulf. On November 10, 2018, the USACE received a Department of Army application pursuant to Section 10 of the Rivers and Harbors Act for structures and work affecting navigable federal waters from the same marine aquaculture facility. On behalf of the two Federal Agencies responsible for permitting aquaculture operations in federal waters of the Gulf, the EPA is requesting initiation of the ESA § 7 informal consultation process for the two federal permits needed to operate the proposed marine aquaculture facility. The EPA is also initiating consultation pursuant to the Fish and Wildlife Coordination Act.

Given that the action of permitting the proposed project involves more than one federal agency, the EPA has elected to act as the lead agency to fulfill the consultation responsibilities pursuant to the implementing regulations of ESA § 7.² This consultation request shall also serve as the written notice to the NMFS that the EPA is acting as the lead agency as required by 50 CFR § 402.07. The USACE is a cooperating and co-federal agency for this informal consultation request. The completion of this informal consultation shall satisfy the EPA's and USACE's obligations under ESA § 7.

¹ In accordance with the *Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and Endangered Species Act* (2001).

² 50 CFR § 402.07 allows a lead agency: "When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency."

The attached supporting Biological Evaluation (BE) was prepared by the EPA and the USACE to jointly consider the potential effects that the proposed actions may have on listed and proposed species and designated and proposed critical habitat. Based on the information within the BE, the EPA and USACE have determined that the proposed actions are not likely to adversely affect any listed or proposed species as well as designated and proposed critical habitat species under the jurisdiction of the NMFS. As outlined in the ESA MOA, the EPA requests that the NMFS respond in writing within 30 days of receiving the not likely to adversely affect determination documented within the BE. The response should state whether the NMFS concurs or does not concur with the determination made by the EPA and USACE. If the NMFS does not concur, it will provide a written explanation that includes the species and/or critical habitat of concern, the perceived adverse effects, and supporting information.

The EPA and USACE are coordinating the interagency review process in accordance with the interagency *Memorandum of Understanding for Permitting Offshore Aquaculture Activities in Federal Waters of the Gulf*,³ and conducting a comprehensive analysis of all applicable environmental requirements as allowed by the National Environmental Policy Act (NEPA); however, a consolidated cooperation process under NEPA is not being used to satisfy the requirements of ESA § 7 as described in 50 CFR § 402.06.⁴ The NMFS is a cooperating agency for the NEPA analysis and has provided scientific expertise related to the BE and NEPA analysis for the Velella Epsilon facility including information about: site selection, ESA-listed species, marine mammal protection, and essential fish habitat. While some information related to the ESA analysis is within the coordinated NEPA evaluation developed by multiple federal agencies, the attached BE is being provided as a stand-alone document to comply with the consultation process under ESA § 7.

If you require any further information during this consultation period or have any questions, please contact Mr. Kip Tyler ([[HYPERLINK "mailto:Tyler.Kip@epa.gov"](mailto:Tyler.Kip@epa.gov)] or 404-562-9294).

Sincerely,

Chris Thomas, Chief
Permitting and Grants Branch
Water Division

cc: Ms. Katy Damico, USACE (via email)
Dr. Jess Beck-Stimpert, NMFS (via email)

³ On February 6, 2017, the Memorandum of Understanding for Permitting Offshore Aquaculture Activities in Federal Waters of the Gulf of Mexico became effective for seven federal agencies with permitting or authorization responsibilities.

⁴ 50 CFR § 402.06 states that "Consultation, [[HYPERLINK "https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=45a98f97e618fa0dd8220ae2c17dcee9&term_occur=1&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06"](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=45a98f97e618fa0dd8220ae2c17dcee9&term_occur=1&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06)] \o "conference"], and [[HYPERLINK "https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=40dabe99c91bea34b9ecf912ffca41ff&term_occur=1&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06"](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=40dabe99c91bea34b9ecf912ffca41ff&term_occur=1&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06)] \o "biological assessment"] procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy [[HYPERLINK "https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=5ee7c9839d403b7dda85c4fe7e21f9f0&term_occur=1&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06"](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=5ee7c9839d403b7dda85c4fe7e21f9f0&term_occur=1&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06)] \o "Act"] (NEPA) ([[HYPERLINK "https://www.law.cornell.edu/uscode/text/42/4321"](https://www.law.cornell.edu/uscode/text/42/4321)] \o "42 U.S.C. 4321"] *et seq.*, implemented at [[HYPERLINK "https://www.law.cornell.edu/cfr/text/40"](https://www.law.cornell.edu/cfr/text/40)] \o "40"] CFR Parts [[HYPERLINK "https://www.law.cornell.edu/cfr/text/40/part-1500"](https://www.law.cornell.edu/cfr/text/40/part-1500)] \o "1500"] - [[HYPERLINK "https://www.law.cornell.edu/cfr/text/40/part-1508"](https://www.law.cornell.edu/cfr/text/40/part-1508)] \o "1508"]) or the Fish and Wildlife Coordination [[HYPERLINK "https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=5ee7c9839d403b7dda85c4fe7e21f9f0&term_occur=2&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06"](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=5ee7c9839d403b7dda85c4fe7e21f9f0&term_occur=2&term_src=Title:50:Chapter:IV:Subchapter:A:Part:402:Subpart:A:402.06)] \o "Act"] (FWCA)."

Mr. Jeffrey Howe, USFWS (via email)